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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,706	08/31/2001	Kenneth O' Hara	511-018-2	1005
4955	7590	04/19/2004	EXAMINER	
WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP BRADFORD GREEN BUILDING 5 755 MAIN STREET, P O BOX 224 MONROE, CT 06468			BARRY, CHESTER T	
			ART UNIT	PAPER NUMBER
			1724	
DATE MAILED: 04/19/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

A9

Advisory Action

Application No.

09/914,706

Applicant(s)

O' HARA, KENNETH

Examiner

Chester T. Barry

Art Unit

1724

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: 24,25 and 32.

Claim(s) rejected: 21-23,26-31 and 33-44.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

Chester T. Barry
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Art Unit: 1724

Art Unit: 1724

Claim 28 (as proposed) would require further consideration and search insofar as at no time was a claim to a system of the following scope presented for examination.

Claim 28 (currently amended): A mixing, aeration or oxygenating system to aerate or oxygenate ponds, rivers, or lakes, sewage or effluent treatment lagoons or beds or to airstrip volatile compounds from water or other solutes and comprising:

- (a) a pipe system having a plurality of outlets branching from a gas distribution supply line;
- (b) a source of pressurized gas comprising oxygen connected to the distribution supply line; and
- (c) a moving element constant flow regulator for each outlet to cause a desired constant flow of gas to be delivered through the outlets when pressure in the pipe system exceeds a predetermined minimum value.

While a system of the foregoing scope in which the moving element constant flow regulator included an "'O' ring moving element ring" [sic, an "O" ring moving element] (see claim 32), no such system comprising a generic moving element, i.e., a moving element not limited to an "O" ring moving element, was searched and examined.

Applicant's remark that claim 28 as proposed (reprinted above),

has been amended to include the limitations of allowable claim 24

(after final of 3/30/04, at page 10) cannot be understood because system claim 28 (as proposed) does not appear to be limited to a method as claim 24 is, nor by the steps of:

- (a) providing a pipe system having a plurality of outlets branching from a common distribution line;
- (b) continuously providing a predetermined minimum volume of a gas comprising oxygen and introducing the gas into the pipe system; and
- (c) delivering a desired constant quantity of the gas at each of the outlets by providing a moving element constant flow regulator means for each outlet which limits gas flow from each of the outlets to a constant amount when pressure in the pipe system exceeds a predetermined minimum value.

Moreover, to the extent that applicant believes that a system comprising structural elements A, B, and C has the same scope as a method of providing and using structural elements A, B, and C, please note that method claim 24 is not limited to a method of mixing, aerating or oxygenating any fluid, but to a method of mixing, aerating or oxygenating only ponds, river, lakes, sewage treatment lagoons or effluent beds, or to a method of air stripping volatile compounds or other solutes¹ from not any liquid, but specifically from water. Claim 28, on the other hand, may be used to mix strictly

¹ Please note the imbedded claim construction issue raised by applicant's use of "or other solutes" rather than "or other solvents."

Art Unit: 1724

hydrocarbon liquids, for example. The preambular phrase "to aerate . . . or other solutes" is merely a statement of intended use and does not limit the scope of the positively recited elements set forth in the body of the claim, i.e., the pipe system, the pressurized gas source, and the moving element constant flow regulator. Please note that there is no recitation of water or water-based fluids in the body of claim 28.

Accordingly, even a cursory comparison of the scope of claim 24 and proposed claim 28 makes clear that the latter has not been amended to include the step limitations of claim 24, as urged by applicant.

The March 30, 2004, paper also raises the issue of an objection under 37 CFR 1.121 to claim 25 insofar as the claim status identifier (currently given as, "previously presented") appears to be incorrect: "(currently amended)" appears to be correct.

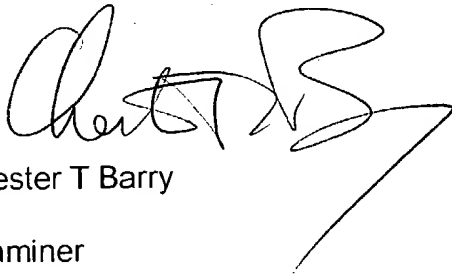
For the reasons set forth above, the March 30, 2004, after final paper will not be entered.

Cancellation of claim 26, as proposed in your 3/30/04 paper, would overcome the 112(2) rejection of claims 21 – 27 and 112(4) rejection of claim 26.

In the final Office action, claims 24, 25, and 32 were indicated as allowable over art, but

Art Unit: 1724

objections were made because these claims were dependent on rejected base claims.

A handwritten signature in black ink, appearing to read 'Chester T Barry'. The signature is stylized with large, flowing loops and a long, sweeping underline that extends to the right.

Chester T Barry

Examiner

571-272-1152